

SENATE BILL 129

M4

(2lr0008)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Environmental Matters* —

Introduced by **Chair, Education, Health, and Environmental Affairs Committee**
(By Request – Departmental – Agriculture)

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Agricultural Land Preservation Foundation – Easements**

3 FOR the purpose of repealing certain obsolete language relating to agricultural
4 districts and agricultural land preservation easements; requiring certain
5 applicants to include certain information in certain applications; altering
6 certain notice requirements; clarifying the process and requirements for the
7 application, approval, and acquisition of agricultural preservation easements;
8 repealing certain deadlines; authorizing the Maryland Agricultural Land
9 Preservation Foundation to assign certain district agreements to the governing
10 body of a county under certain circumstances; *providing for the effective date of*
11 *this Act*; making stylistic changes; and generally relating to agricultural land
12 preservation easements purchased by the Maryland Agricultural Land
13 Preservation Foundation.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 BY repealing and reenacting, with amendments,
 2 Article – Agriculture
 3 Section 2–509, 2–510, 2–513(b)(8), and 2–513.1(a)
 4 Annotated Code of Maryland
 5 (2007 Replacement Volume and 2011 Supplement)

6 BY repealing and reenacting, without amendments,
 7 Chapter 650 of the Acts of the General Assembly of 2007
 8 Section 2 and 3

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Agriculture**

12 2–509.

13 (a) (1) The Foundation shall follow the provisions under this section for
 14 the easement application process [for:

15 (i) Properties without established districts; and

16 (ii) Properties entering into a district].

17 (2) The Foundation shall adopt regulations and procedures for:

18 (i) [Establishment and monitoring of agricultural districts and
 19 easements;]

20 [(ii)] Evaluation of land [to be included within agricultural
 21 districts or land to be subject to] **FOR WHICH APPLICATION IS MADE TO SELL** an
 22 easement; and

23 [(iii)] **(II)** Purchase of easements, including the purchase of
 24 easements under an installment purchase agreement.

25 (b) Regulations and procedures adopted by the Foundation for the
 26 [establishment and monitoring of agricultural districts and for the] purchase of
 27 easements shall provide that:

28 (1) One or more owners of land actively devoted to agricultural use
 29 may file [a petition] **AN APPLICATION** with the county governing body requesting
 30 [the establishment of an agricultural district or an application for] the purchase of an
 31 easement by the Foundation on the land owned by the [petitioners] **APPLICANTS**. The
 32 [petition] **APPLICATION** shall include maps and descriptions of the current use of
 33 land [in the proposed district or] for the proposed easement, **AND ANY OTHER**

1 **INFORMATION REQUIRED BY THE FOUNDATION TO EVALUATE THE LAND FOR**
2 **PURCHASE OF AN EASEMENT.**

3 (2) Upon receipt of [a petition to establish an agricultural district or]
4 AN application to purchase an easement the local governing body shall refer the
5 [petition or] application and accompanying materials both to the agricultural
6 preservation advisory board and to the county planning and zoning body.

7 (i) [Within 60 days of] **AFTER** the referral of [a petition or] AN
8 application, the agricultural preservation advisory board shall advise the county
9 governing body as to whether or not the land [in] **FOR** the [proposed district or]
10 proposed easement meets the qualifications established by the Foundation under
11 subsection (d) of this section, and whether or not the advisory board recommends
12 [establishment of the district or] the purchase of the easement.

13 **(II) IN MAKING ITS RECOMMENDATION, THE COUNTY**
14 **AGRICULTURAL PRESERVATION ADVISORY BOARD SHALL:**

15 **1. TAKE INTO CONSIDERATION CRITERIA AND**
16 **STANDARDS ESTABLISHED BY THE FOUNDATION UNDER THIS SUBTITLE,**
17 **CURRENT LOCAL REGULATIONS, LOCAL PATTERNS OF LAND DEVELOPMENT,**
18 **THE KINDS OF DEVELOPMENT PRESSURES CURRENTLY EXISTING ON THE LAND**
19 **FOR THE PROPOSED EASEMENT, STATE SMART GROWTH GOALS, AND ANY**
20 **LOCALLY ESTABLISHED PRIORITIES FOR THE PRESERVATION OF**
21 **AGRICULTURAL LAND; AND**

22 **2. RECOMMEND FOR RANKING ANY APPLICATION**
23 **THAT QUALIFIES AND MEETS THE PRIORITIES ESTABLISHED BY THE COUNTY**
24 **GOVERNING BODY FOR THE PRESERVATION OF AGRICULTURAL LAND.**

25 [(ii)] **(III)** [Within 60 days of] **AFTER** the referral of [a petition
26 or] AN application, the county planning and zoning body shall advise the local
27 governing body as to whether or not [establishment of the district or] the purchase of
28 the easement is compatible with existing and approved county plans and overall
29 county policy, and whether or not the planning and zoning body recommends
30 [establishment of the district or] the purchase of the easement.

31 (3) If either the agricultural preservation advisory board or the
32 planning and zoning body recommends approval, the county governing body shall hold
33 a public hearing on the [petition or] **APPLICATION** for the proposed easement.
34 Adequate notice of the hearing shall be given to all [landowners in the proposed
35 district or] **OWNERS WHOSE LAND WOULD BE ENCUMBERED BY** the proposed
36 easement[, and to the Foundation] **AND ALL OWNERS WHOSE LAND IS CONTIGUOUS**
37 **TO THE LAND FOR THE PROPOSED EASEMENT.**

1 **(4) IN DECIDING WHETHER TO APPROVE THE APPLICATION, THE**
 2 **COUNTY GOVERNING BODY SHALL RECEIVE THE RECOMMENDATION OF THE**
 3 **COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD ESTABLISHED**
 4 **UNDER § 2-504.1 OF THIS SUBTITLE.**

5 **[(4)] (5) (i) [Within 120 days after] AFTER** the receipt of the
 6 **[petition or] application[,] AND THE RECOMMENDATIONS OF THE AGRICULTURAL**
 7 **PRESERVATION ADVISORY BOARD AND THE COUNTY PLANNING AND ZONING**
 8 **BODY,** the county governing body shall render a decision as to whether or not the
 9 **[petition or] application** shall be recommended to the Foundation for approval.

10 (ii) If the county governing body decides to recommend approval
 11 of the **[petition or] application,** it shall **[so]** notify the Foundation and forward to the
 12 Foundation:

13 **1. [the petition or] THE** application and all
 14 accompanying materials, including the recommendations of the advisory board and
 15 county planning and zoning body;

16 **2. A RANKING OF ALL APPLICATIONS BASED ON:**

17 **A. THE COUNTY GOVERNING BODY'S LOCALLY**
 18 **ESTABLISHED PRIORITIES AS APPROVED BY THE FOUNDATION, WHICH FOR**
 19 **PURPOSES OF ENHANCING COMPETITIVE BIDDING MAY INCLUDE A SYSTEM**
 20 **THAT RANKS PROPERTIES IN ASCENDING ORDER WITH RESPECT TO THE**
 21 **PROPORTION OBTAINED BY DIVIDING THE ASKING PRICE BY THE VALUE OF THE**
 22 **EASEMENT; AND**

23 **B. GUIDELINES ADOPTED BY THE FOUNDATION**
 24 **UNDER SUBSECTION (D) OF THIS SECTION; AND**

25 **3. A STATEMENT OF THE TOTAL CURRENT**
 26 **DEVELOPMENT RIGHTS ON THE LAND FOR THE PROPOSED EASEMENT, WHICH**
 27 **SHALL INCLUDE THE TOTAL NUMBER OF DEVELOPMENT RIGHTS THAT HAVE**
 28 **BEEN SUBDIVIDED OR TRANSFERRED.**

29 (iii) If the county governing body recommends denial of the
 30 **[petition] APPLICATION,** it shall **[so]** inform the Foundation and the **[petitioners]**
 31 **APPLICANTS.**

32 **[(5) The Foundation may approve a petition for the establishment of an**
 33 **agricultural district only if:**

1 (i) The land within the proposed district meets the
2 qualifications established under subsection (d) of this section;

3 (ii) The petition has been approved by the county governing
4 body; and

5 (iii) The establishment of the district or the purchase of the
6 easement is approved by a majority of the Foundation board of trustees at-large, by
7 the Secretary, and by the State Treasurer.

8 (6) The Foundation shall render its decision on a petition to establish
9 an agricultural district within 60 days of the receipt of the petition, and shall inform
10 the county governing body and the petitioners of its decision.

11 (7) (i) If the Foundation approves the petition, the agricultural
12 district shall be established by an ordinance of the county governing body.

13 (ii) The establishment of the district shall not take effect until
14 all landowners in the proposed district have executed and recorded among the land
15 records an agreement with the Foundation stipulating that for a specified period of
16 time from the establishment of the agricultural district, the landowner agrees to keep
17 his land in agricultural use and has the right to offer to sell an easement for
18 development rights on his land to the Foundation under the provisions of this subtitle.

19 (iii) In the ordinance that establishes an agricultural district:

20 1. The county governing body shall establish the length
21 of time required for a district agreement under subparagraph (ii) of this paragraph;
22 and

23 2. The time period of the district agreement shall be
24 from 3 to 10 years, both inclusive.

25 (iv) In the event of severe economic hardship the Foundation,
26 with the concurrence of the county governing body, may release the landowner's
27 property from the agricultural district. Any person aggrieved by a decision of the
28 Foundation regarding a determination of severe economic hardship is entitled to
29 judicial review.

30 (v) Nothing in this section shall preclude the landowner from
31 selling his property.

32 (8) At any time after the period of time stipulated in the district
33 agreement, a landowner may terminate his property as an agricultural district by
34 notifying the Foundation one year in advance of his intention to do so.

1 (9) After the establishment of an agricultural district the county
2 governing body or the Foundation may review the use of land within the district.

3 (10) The Foundation may approve alteration or abolition of a district
4 only if:

5 (i) The use of land within the district has so changed as to
6 cause land within the district to fail to meet the qualifications established under
7 subsection (d) of this section;

8 (ii) The alteration or abolition of the district has been
9 recommended by the county governing body; and

10 (iii) The alteration or abolition is approved by a majority of the
11 Foundation board of trustees at-large, by the Secretary, and by the State Treasurer.]

12 (c) Regulations and procedures adopted by the Foundation for the
13 [establishment] **PURCHASE** and monitoring of [agricultural districts and] easements
14 may not require, in Garrett County or Allegany County, a natural gas rights owner or
15 lessee to subordinate its interest to the Foundation's interest if the Foundation
16 determines that exercise of the natural gas rights will not interfere with an
17 agricultural operation conducted on [land in the agricultural district or] land subject
18 to an easement.

19 (d) Regulations and criteria developed by the Foundation relating to land
20 which may be [included in an agricultural district or subject to] **CONSIDERED FOR**
21 **PURCHASE OF** an easement shall provide that:

22 (1) Subject to item (2) of this subsection, land shall meet productivity,
23 acreage, and locational criteria determined by the Foundation to be necessary for the
24 continuation of farming;

25 (2) As long as all other criteria are met, land that is at least 50 acres
26 in size **OR IS CONTIGUOUS TO OTHER PERMANENTLY PRESERVED LAND** shall
27 qualify for [inclusion in an agricultural district or] **PURCHASE OF AN** easement;

28 (3) The Foundation shall attempt to preserve the minimum number of
29 acres [in a given district] which may reasonably be expected to promote the continued
30 availability of agricultural suppliers and markets for agricultural goods;

31 (4) Land within the boundaries of a 10-year water and sewer service
32 district may be [included in an agricultural district or] **CONSIDERED FOR PURCHASE**
33 **OF AN** easement only if that land is outstanding in productivity and is of significant
34 size; [and]

1 (5) Land may be [included in an agricultural district or]
2 **CONSIDERED FOR PURCHASE OF AN** easement only if the county regulations
3 governing the land permit the activities listed under § 2-513(a) of this subtitle; **AND**

4 **(6) LAND BE EVALUATED FOR:**

5 **(I) LOCATION IN A PRIORITY PRESERVATION AREA OF THE**
6 **COUNTY;**

7 **(II) SOIL AND OTHER LAND CHARACTERISTICS ASSOCIATED**
8 **WITH AGRICULTURAL AND SILVICULTURAL PRODUCTIVITY;**

9 **(III) AGRICULTURAL AND SILVICULTURAL PRODUCTION AND**
10 **CONTRIBUTION TO THE AGRICULTURAL AND SILVICULTURAL ECONOMY; AND**

11 **(IV) ANY OTHER UNIQUE COUNTY CONSIDERATIONS THAT**
12 **SUPPORT THE GOALS OF THE PROGRAM.**

13 2-510.

14 (a) An owner of agricultural land [that has an] **WHOSE APPLICATION TO**
15 **SELL AN** easement **HAS BEEN** approved by the county under this subtitle may sell an
16 easement to the Foundation on the contiguous acreage of [such] **THE** agricultural
17 land, **SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE AND REGULATIONS**
18 **OF THE FOUNDATION.**

19 (b) In order to be considered by the Foundation, an application to sell shall:

20 (1) Be received by the board at a time the board determines for the
21 fiscal year in which the application is to be considered;

22 (2) Include an asking price at which the owner is willing to sell an
23 easement; and

24 (3) Include a complete description of the [subject] land **FOR THE**
25 **PROPOSED EASEMENT.**

26 (c) **[(1)]** The board shall determine the maximum number of applications
27 **THAT IT WILL ACCEPT FROM EACH COUNTY** in each offer cycle.

28 **[(2)]** Applications received after the maximum number has been
29 reached may be considered in the next available cycle.]

30 (d) Within 30 days after the receipt of an application **FROM THE COUNTY**
31 **GOVERNING BODY**, the Foundation shall notify the landowner **AND THE COUNTY**

1 **GOVERNING BODY** of the receipt and sufficiency of the application. If the original
2 application is insufficient, the Foundation shall specify the reason for insufficiency,
3 and the Foundation shall grant an additional 30 days for the landowner to remedy the
4 insufficiency. If the application is made sufficient within 30 days of the notification by
5 the Foundation, the application shall be considered as if it had originally been
6 submitted in a timely and sufficient manner.

7 (e) [(1) (i) Within 30 days after the receipt of an application to sell, the
8 Foundation shall notify the governing body of the county containing the subject land,
9 that an application to sell has been received.

10 (ii) 1. Within] **IF THE APPLICATION IS SUBMITTED TO**
11 **THE FOUNDATION PRIOR TO COUNTY APPROVAL, THEN WITHIN** 60 days of the
12 notification **OF SUFFICIENCY OF THE APPLICATION**, the county governing body shall
13 advise the Foundation as to [local] **THE COUNTY'S** approval or disapproval of the
14 application. The Foundation shall grant a 30-day extension of this [response]
15 **APPROVAL** period if the county governing body applies to the Foundation for an
16 extension and states its reasons for seeking an extension.

17 [2. Upon local approval of the application, the county
18 governing body shall submit a statement of the total current development rights on
19 the subject land to the Maryland Agricultural Land Preservation Foundation, along
20 with the application approval notification. The statement shall include the total
21 number of development rights that have been subdivided or transferred.

22 (2) In deciding whether to approve the application, the county
23 governing body shall:

24 (i) Receive the recommendation of the county agricultural
25 preservation advisory board established under § 2-504.1 of this subtitle; and

26 (ii) Rank all applications based on:

27 1. Its locally established priorities as approved by the
28 Foundation, which, for purposes of enhancing competitive bidding, may include a
29 system that ranks properties in ascending order with respect to the proportion
30 obtained by dividing the asking price by the value of the easement; and

31 2. Guidelines adopted by the Foundation under
32 paragraph (3) of this subsection.

33 (3) (i) In consultation with county governing bodies, the
34 Foundation shall adopt guidelines to identify easements for purchase that further the
35 goals of the Maryland Agricultural Land Preservation Program.

1 (ii) Guidelines adopted under subparagraph (i) of this
2 paragraph shall include consideration of:

- 3 1. Location in a priority preservation area of the county;
- 4 2. Soil and other land characteristics associated with
5 agricultural productivity;
- 6 3. Agricultural production and contribution to the
7 agricultural economy; and
- 8 4. Any other unique county considerations that support
9 the goals of the program.

10 (4) In making its recommendation, the county agricultural
11 preservation advisory board shall:

12 (i) Take into consideration criteria and standards established
13 by the Foundation under this subtitle, current local regulations, local patterns of land
14 development, the kinds of pressures to develop the subject land, State smart growth
15 goals, and any locally established priorities for the preservation of agricultural land;
16 and

17 (ii) Recommend for ranking any application that qualifies and
18 meets the priorities established by the county governing body for the preservation of
19 agricultural land.

20 (5) The county agricultural preservation advisory board shall provide
21 a public hearing concerning any application to sell if such a hearing is requested by a
22 majority of the county agricultural preservation advisory board, or by a majority of the
23 county governing body, or by the applicant.

24 (6) The board of trustees of the Foundation shall not approve any
25 application to sell which has not been approved by the governing body of the county
26 containing the subject land.]

27 (f) (1) In determining which applications it shall approve for the
28 purchase of the easements offered for sale in each fiscal year under this section, the
29 Foundation:

30 (i) May approve only those applications in which the subject
31 land meets the criteria and standards established under §§ 2-509 and 2-513 of this
32 subtitle;

33 (ii) Except as provided in subparagraph (iii) of this paragraph,
34 [rank] REVIEW the applications and submit offers to buy at the beginning of each offer

1 cycle based on the approved priorities established by each eligible county for the
2 preservation of agricultural land; and

3 (iii) For applications competing on a statewide basis following
4 the initial round of offers, shall rank the applications and submit offers to buy in order
5 of priority, as provided in paragraph (2) of this subsection.

6 (2) The Foundation shall adopt by regulation a standard priority
7 ranking system for additional offers to buy by which it shall rank each application.
8 The system shall be based on the following criteria as to the easements offered in any
9 one county:

10 (i) The applications shall be assigned a rank in ascending order
11 with respect to the proportion obtained by dividing the asking price by the State
12 easement value. The resulting rank shall be the sole criterion for establishing the
13 priority for discounted applications that include proportions of 1.0 or lower.

14 (ii) All additional applications which include proportions greater
15 than 1.0 shall be assigned a numerical value that, in regard to the land for which the
16 easement is offered, reflects:

17 1. The relative productive capacity of the land;

18 2. The extent to which the easement acquisition will
19 contribute to the continued availability of agricultural suppliers and markets for
20 agricultural goods; and

21 3. The priority recommendations of the local governing
22 bodies.

23 (g) The Foundation may approve general allotted purchases of easements in
24 a county not to exceed in aggregate value the amount allotted for that county under §
25 2–508(b) of this subtitle for the fiscal year in which such purchases are made, plus any
26 amount of transferred local open space funds designated by the local governing body
27 for general purchases.

28 (h) The Foundation may approve matching allotted purchases of easements
29 in an eligible county such that the Foundation's share will not exceed in aggregate
30 value the amount allotted for that county under § 2–508(b) of this subtitle for that
31 fiscal year.

32 (i) Upon approval of a majority of the board members at-large, and upon the
33 recommendation of the State Treasurer and the Secretary, an application to sell shall
34 be approved, and an offer to buy containing the specific terms of the purchase shall be
35 tendered to the landowner. An offer to buy may specify terms, contingencies, and
36 conditions not contained in the original application.

1 (j) [(1) With respect to allotted purchases, the Foundation shall tender
2 any offer to buy containing the specific terms of the purchase on or before January 31
3 of the fiscal year in which the purchase is to be made.]

4 [(2)] (1) With respect to additional offers to buy tendered under §
5 2-508(c) of this subtitle, the Foundation may not tender such offers earlier than 30
6 days after the completion of allotted [purchases] **OFFERS TO BUY** in each offer cycle.

7 [(3)] (2) A landowner has 30 days from the date of any offer to buy in
8 which to accept or reject the offer.

9 (k) (1) At the time of settlement of the purchase of an easement, the
10 landowner and the Foundation may agree upon and establish a schedule of payment
11 such that the landowner may receive consideration for the easement in a lump sum, in
12 installments over a period of up to 10 years from the date of settlement, or as provided
13 in an installment purchase agreement under paragraph (3) of this subsection. At the
14 time of settlement, the Foundation shall notify in writing each landowner who sells an
15 agricultural easement to the Foundation of the schedule of anticipated ranges of
16 interest rates to be paid on any unpaid balance after the date of settlement.

17 (2) (i) If a schedule of installments is agreed upon, the Comptroller
18 shall retain in the Maryland Agricultural Land Preservation Fund an amount of
19 money sufficient to pay the landowner according to the schedule.

20 (ii) The landowner shall receive interest on any unpaid balance
21 remaining after the date of settlement. The State Treasurer shall invest the unpaid
22 balance remaining after the date of settlement in a certificate or certificates of deposit
23 at the maximum interest rate offered by a bank servicing the State or at such other
24 institutions which pay the maximum interest rates payable on time and savings
25 deposits at federally insured commercial banks selected by the Treasurer, to mature in
26 accordance with an agreed upon schedule of installments as provided in this section.
27 Any interest earned on the invested unpaid balance shall be paid with the installment
28 when due, less 1/4 of 1 percent.

29 (3) (i) The Foundation may pay the landowner according to a
30 schedule, up to a maximum term of 15 years, established in an installment purchase
31 agreement.

32 (ii) The installment purchase agreement shall:

33 1. Require that the Foundation make annual equal
34 payments to the landowner of interest on the outstanding balance of the purchase
35 price;

36 2. Require that the Foundation pay the landowner the
37 remainder of the purchase price at the end of the term;

1 (a) Effective July 1, 2007, districts may not be a requirement for the
2 easement application process to the Maryland Agricultural Land Preservation
3 Foundation; and

4 (b) Except as provided in Section 3 of this Act, as of June 30, 2012, all
5 districts in the Maryland Agricultural Land Preservation Foundation shall be
6 terminated and a landowner may not be bound to the terms of any Foundation district
7 agreement.

8 SECTION 3. AND BE IT FURTHER ENACTED, That the following
9 agricultural land preservation districts established under § 2-509 of the Agriculture
10 Article or by a county shall remain in force and may not be terminated:

11 (a) Any district in which an easement has been transferred to the
12 Foundation; and

13 (b) Any district established by a county and a landowner for the purpose of
14 providing a property tax credit to the landowner.

15 SECTION 2. AND BE IT FURTHER ENACTED, That for all district
16 agreements encumbering land on which the Foundation has not purchased an
17 easement as of June 30, 2012, and which otherwise have not terminated as of June 30,
18 2012, the Foundation may assign those district agreements to the county governing
19 body for the county in which the land is located by an assignment instrument to be
20 recorded in the land records of that county, if the county governing body is willing to
21 accept an assignment. From the date of the recording of the assignment instrument, a
22 county governing body shall be entitled to enforce the terms of the district agreements
23 it has been assigned, and shall determine whether or not a district agreement may be
24 modified or terminated.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 June 30, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.